



Senate

General Assembly

File No. 636

February Session, 2008

Substitute Senate Bill No. 201

Senate, April 16, 2008

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT ESTABLISHING A DEMONSTRATION PROJECT FOR AN OFFICE OF ADMINISTRATIVE HEARINGS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2008*) There shall be within the
2 executive department an Office of Administrative Hearings for the
3 purpose of separating the adjudicatory function from the investigatory
4 and prosecutorial functions of agencies in the executive department
5 and to perform the impartial administration and conduct of hearings
6 of contested cases in accordance with the provisions of sections 1 to 10,
7 inclusive, and 22 of this act and chapter 54 of the general statutes. The
8 central office of the Office of Administrative Hearings shall be
9 established within Hartford County.

10 Sec. 2. (NEW) (*Effective July 1, 2008*) (a) (1) The Governor shall
11 nominate the Chief Administrative Law Adjudicator to serve a term
12 expiring on March 1, 2009. Thereafter, the Governor shall nominate a
13 Chief Administrative Law Adjudicator to serve for a four-year term or
14 until a successor has qualified. To be eligible for nomination, the Chief

15 Administrative Law Adjudicator shall have been admitted to the
16 practice of law in this state for at least ten years and shall be
17 knowledgeable on the subject of administrative law. The Chief
18 Administrative Law Adjudicator shall take the oath of office provided
19 in section 1-25 of the general statutes prior to commencing his or her
20 duties, shall devote full time to the duties of the office of Chief
21 Administrative Law Adjudicator and shall not engage in the private
22 practice of law. The Chief Administrative Law Adjudicator shall be
23 eligible for renomination.

24 (2) Each nomination made by the Governor to the General
25 Assembly for Chief Administrative Law Adjudicator shall be referred,
26 without debate, to the committee on the judiciary, which shall report
27 thereon within thirty legislative days from the time of reference, but no
28 later than seven legislative days before the adjourning of the General
29 Assembly. Each appointment by the General Assembly of a Chief
30 Administrative Law Adjudicator shall be by concurrent resolution. The
31 action on the passage of each such resolution in the House of
32 Representatives and in the Senate shall be by vote taken on the
33 electrical roll-call device. No resolution shall contain the name of more
34 than one nominee. The Governor shall, within five days after the
35 Governor has notice that any nomination for a Chief Administrative
36 Law Adjudicator made by the Governor has failed to be approved by
37 the affirmative concurrent action of both houses of the General
38 Assembly, make another nomination to such office.

39 (3) Notwithstanding the provisions of section 4-19 of the general
40 statutes, no vacancy in the position of Chief Administrative Law
41 Adjudicator shall be filled by the Governor when the General
42 Assembly is not in session unless, prior to such filling, the Governor
43 submits the name of the proposed vacancy appointee to the committee
44 on the judiciary. Within forty-five days, the committee on the judiciary
45 may, upon the call of either chairperson, hold a special meeting for the
46 purpose of approving or disapproving such proposed vacancy
47 appointee by majority vote. The Governor shall not administer the
48 oath of office to such proposed vacancy appointee until the committee

49 has approved such proposed vacancy appointee. If the committee
50 determines that it cannot complete its investigation and act on such
51 proposed vacancy appointee within such forty-five-day period, the
52 committee may extend such period by an additional fifteen days. The
53 committee shall notify the Governor in writing of any such extension.
54 Failure of the committee to act on such proposed vacancy appointee
55 within such forty-five-day period or any fifteen-day extension period
56 shall be deemed to be an approval.

57 (b) The Chief Administrative Law Adjudicator may be removed
58 during his or her term by the Governor for good cause shown.

59 (c) The Chief Administrative Law Adjudicator shall be exempt from
60 the classified service.

61 (d) The Chief Administrative Law Adjudicator, administrative law
62 adjudicators, assistants and other employees of the Office of
63 Administrative Hearings shall be entitled to the fringe benefits
64 applicable to other state employees, shall be included under the
65 provisions of chapters 65 and 66 of the general statutes regarding
66 disability and retirement of state employees, and shall receive full
67 retirement credit for each year or portion thereof for which retirement
68 benefits are paid for service as such Chief Administrative Law
69 Adjudicator, administrative law adjudicator, assistant or other
70 employee.

71 Sec. 3. (NEW) (*Effective July 1, 2008*) The Chief Administrative Law
72 Adjudicator shall be the chief executive officer of the Office of
73 Administrative Hearings and shall:

74 (1) Have all of the powers specifically granted in the general statutes
75 and any additional powers that are reasonable and necessary to enable
76 the Chief Administrative Law Adjudicator to carry out the duties of his
77 or her office, including, but not limited to, the powers and duties
78 specified in section 4-8 of the general statutes;

79 (2) Assign administrative law adjudicators in all cases referred to

80 the Office of Administrative Hearings, provided, in assigning an
81 administrative law adjudicator to a case, the Chief Administrative Law
82 Adjudicator shall, whenever practicable, assign an administrative law
83 adjudicator who has expertise in the legal issues or general subject
84 matter of the proceeding;

85 (3) Have all the powers and duties of an administrative law
86 adjudicator;

87 (4) Prepare an edited version of a proposed final decision and final
88 decision that shall not disclose protected information in any case
89 where any provision of the general statutes, federal law, state or
90 federal regulations, or an order of a court of competent jurisdiction
91 bars the disclosure of the identity of any person or party or bars the
92 disclosure of any other information;

93 (5) Collect, compile and prepare statistics and other data with
94 respect to the operations of the Office of Administrative Hearings and
95 submit annually to the Governor and the General Assembly a report
96 on such operations, including, but not limited to, the number of
97 hearings initiated, the number of proposed final decisions rendered,
98 the number of partial or total reversals of such decisions by the
99 agencies, the number of final decisions rendered and the number of
100 proceedings pending;

101 (6) Study the subject of administrative adjudication in all its aspects
102 and develop recommendations to promote the goals of impartiality,
103 fairness, uniformity and cost-effectiveness in the administration and
104 conduct of hearings of contested cases;

105 (7) Adopt regulations, in accordance with chapter 54 of the general
106 statutes, to carry out the provisions of sections 1 to 10, inclusive, and
107 22 of this act and sections 4-176e to 4-181a, inclusive, of the general
108 statutes, as amended by this act, and the policies of the Office of
109 Administrative Hearings in connection therewith. Such regulations,
110 with respect to contested cases heard by said office, shall supersede
111 any inconsistent agency regulations, policies or procedures, except

112 those provisions mandated by the general statutes or federal law, and
113 shall include, but not be limited to, standards related to time limits for
114 agency action in contested cases pursuant to applicable provisions of
115 the general statutes, and standards for the giving of notices of
116 hearings, for the scheduling of hearings and for the assignment of
117 administrative law adjudicators;

118 (8) Develop a program for the continuing education of
119 administrative law adjudicators in procedural due process and in the
120 substantive law of the agencies that are subject to the provisions of
121 section 8 of this act and training for ancillary personnel, and
122 implement such program; and

123 (9) Index, by name and subject, all written orders and final decisions
124 and make all indices, proposed final decisions and final decisions
125 available for public inspection, and copying electronically and to the
126 extent required by the Freedom of Information Act, as defined in
127 section 1-200 of the general statutes.

128 Sec. 4. (NEW) (*Effective October 1, 2008*) (a) Notwithstanding any
129 provision of the general statutes, each full-time employee or
130 permanent part-time employee of an agency subject to the provisions
131 of section 8 of this act whose primary duties (1) are to conduct hearings
132 in contested cases and issue final decisions or proposed final decisions,
133 including, but not limited to, staff attorneys, hearing adjudicators and
134 hearing officers, or (2) relate to providing administrative services
135 required for conducting such hearings and issuing such decisions,
136 shall be transferred to the Office of Administrative Hearings, in
137 accordance with the provisions of this section and sections 4-38d, 4-38e
138 and 4-39 of the general statutes.

139 (b) Persons transferred to the Office of Administrative Hearings
140 pursuant to this section and persons appointed by the Chief
141 Administrative Law Adjudicator pursuant to chapter 67 of the general
142 statutes shall be in the classified service, represented by the collective
143 bargaining representative of an employee organization, as defined in
144 section 5-270 of the general statutes, and subject to the provisions of

145 chapter 68 of the general statutes. Persons transferred to the Office of
146 Administrative Hearings pursuant to this section who are members of
147 an employee organization at the time of their transfer shall continue to
148 be represented by such employee organization.

149 (c) The salaries, seniority and benefits of persons transferred to the
150 Office of Administrative Hearings pursuant to this section shall not be
151 reduced as a result of the transfer.

152 (d) No promotions governed by any existing and applicable
153 memorandum of understanding between the Office of Labor Relations
154 and any collective bargaining representative for state employees shall
155 be denied, delayed, impaired or eliminated by the implementation of
156 sections 1 to 10, inclusive, of this act.

157 (e) (1) Persons transferred to the Office of Administrative Hearings
158 pursuant to this section who are members of a collective bargaining
159 unit at the time of their transfer shall (A) not lose the job classification
160 they had at the time of their transfer as a result of the transfer, and (B)
161 remain the beneficiaries of any existing and applicable memorandum
162 of understanding between the Office of Labor Relations and any
163 collective bargaining representative for state employees. The rights
164 and obligations contained in any memorandum of understanding that
165 applies to staff attorneys shall apply to administrative law adjudicators
166 transferred to the Office of Administrative Hearings and appointed by
167 the Chief Administrative Law Adjudicator.

168 (2) Persons transferred to the Office of Administrative Hearings
169 pursuant to this section who are not members of a collective
170 bargaining unit at the time of their transfer, and persons appointed by
171 the Chief Administrative Law Adjudicator, shall (A) have a job
172 classification commensurate with persons who are members of a
173 collective bargaining unit at the time of their transfer, and (B) be
174 subject to and become the beneficiaries of the terms of any existing and
175 applicable memorandum of understanding between the Office of
176 Labor Relations and any collective bargaining representative for state
177 employees, including the rights and obligations contained in any

178 memorandum of understanding that applies to staff attorneys.

179 (f) Time served in other agencies by persons transferred to the
180 Office of Administrative Hearings pursuant to this section shall be
181 recognized as qualifying experience and time served in the Office of
182 Administrative Hearings shall count as successful and satisfactory
183 performance for career progression under any existing and applicable
184 memorandum of understanding between the Office of Labor Relations
185 and any collective bargaining representative for state employees.

186 (g) An administrative law adjudicator, assistant or other employee
187 of the Office of Administrative Hearings who is removed, suspended,
188 demoted or subjected to disciplinary action or other adverse
189 employment action may appeal such action in accordance with the
190 applicable collective bargaining agreement.

191 Sec. 5. (NEW) (*Effective October 1, 2008*) (a) Each administrative law
192 adjudicator shall have been admitted to the practice of law in this state
193 for at least two years, except that such requirement shall not apply to
194 any administrative law adjudicator transferred pursuant to section 4 of
195 this act. Each administrative law adjudicator shall be knowledgeable
196 on the subject of administrative law.

197 (b) An administrative law adjudicator shall have the powers
198 granted to hearing officers and presiding officers pursuant to sections
199 1 to 10, inclusive, and 22 of this act and chapter 54 of the general
200 statutes.

201 Sec. 6. (NEW) (*Effective October 1, 2008*) All hearings in contested
202 cases conducted by the Office of Administrative Hearings shall be
203 conducted by an administrative law adjudicator assigned by the Chief
204 Administrative Law Adjudicator and shall be conducted in accordance
205 with sections 1 to 10, inclusive, and 22 of this act and sections 4-176e to
206 4-181a, inclusive, of the general statutes, as amended by this act.

207 Sec. 7. (NEW) (*Effective October 1, 2008*) An administrative law
208 adjudicator may conduct hearings, mediations and settlement

209 negotiations held by the Office of Administrative Hearings. If a
210 contested case is not resolved through mediation or settlement, either
211 party may proceed to a hearing. An administrative law adjudicator
212 who attempts to settle or mediate a matter may not thereafter be
213 assigned to hear the matter. If a contested case is resolved by
214 stipulation, agreed settlement or consent order, the administrative law
215 adjudicator shall issue an order dismissing the contested case. The
216 order shall incorporate by reference such stipulation, agreed settlement
217 or consent order which shall be attached thereto. The order shall
218 further provide that no findings of fact or conclusions of law have been
219 made regarding any alleged violations of the law. The order and
220 stipulation, agreed settlement or consent order may be enforceable by
221 any party in the superior court for the judicial district of New Britain.

222 Sec. 8. (NEW) (*Effective October 1, 2008*) (a) Notwithstanding any
223 provision of the general statutes, and except as otherwise provided in
224 sections 9 and 10 of this act, on and after the effective date of this
225 section, the Office of Administrative Hearings shall conduct hearings
226 and render proposed final decisions or, if authorized or required by
227 law, final decisions in contested cases:

228 (1) Pursuant to subdivision (3) of subsection (b) of section 4-61dd of
229 the general statutes;

230 (2) Brought by or before the Department of Children and Families;

231 (3) Brought by or before the Department of Transportation; and

232 (4) Brought by or before the Department of Social Services.

233 (b) Any agency that is not required to refer contested cases to the
234 Office of Administrative Hearings pursuant to this section may, with
235 the consent of the Chief Administrative Law Adjudicator, refer any
236 contested case brought by or before such agency, to the Office of
237 Administrative Hearings for purposes of mediation, settlement or a
238 full adjudication of the contested case by an administrative law
239 adjudicator.

240 (c) The powers, functions and duties of conducting hearings and
241 issuing decisions in contested cases enumerated in subsections (a) and
242 (b) of this section shall, on the date specified in subsection (a) or the
243 date of referral in subsection (b), be transferred to the Office of
244 Administrative Hearings in accordance with the provisions of sections
245 4-38d, 4-38e and 4-39 of the general statutes.

246 (d) Any hearing officer under contract with an agency to conduct
247 hearings and issue decisions in contested cases enumerated in
248 subsections (a) and (b) of this section shall, on and after the date
249 specified in subsection (a) or the date of referral in subsection (b),
250 continue to serve until all such cases assigned to such hearing officer
251 are completed, unless the Chief Administrative Law Adjudicator
252 determines that the case shall be reassigned to an administrative law
253 adjudicator.

254 (e) Nothing in this section shall be construed to apply to the State
255 Board of Mediation and Arbitration or the State Board of Labor
256 Relations.

257 (f) The Department of Children and Families and the Department of
258 Social Services shall each execute any requisite contract with the Office
259 of Administrative Hearings that is necessary to maintain and secure
260 any federal or state funding or reimbursement.

261 Sec. 9. (NEW) (*Effective July 1, 2008*) No administrative law
262 adjudicator may be assigned by the Chief Administrative Law
263 Adjudicator to hear a contested case with respect to:

264 (1) Any hearing that is required by federal law to be conducted by a
265 specific agency or other hearing authority; or

266 (2) Any matter where the head of the agency, or one or more of the
267 members of a multimember agency, presides at the hearing in a
268 contested case.

269 Sec. 10. (NEW) (*Effective July 1, 2008*) On and after October 1, 2011,
270 the Governor, at the request of the head of any agency subject to the

271 provisions of subsection (a) of section 8 of this act and for good cause
272 shown, may exempt such agency from the requirements of said
273 section.

274 Sec. 11. Subsection (e) of section 2c-2b of the 2008 supplement to the
275 general statutes is amended by adding subdivision (21) as follows
276 (*Effective July 1, 2008*):

277 (NEW) (21) The Office of Administrative Hearings established
278 under section 1 of this act.

279 Sec. 12. Section 4-166 of the general statutes is repealed and the
280 following is substituted in lieu thereof (*Effective October 1, 2008*):

281 As used in this chapter and sections 1 to 10, inclusive, and 22 of this
282 act, unless the context otherwise requires:

283 (1) "Agency" means each state board, commission, department or
284 officer authorized by law to make regulations or to determine
285 contested cases, but does not include either house or any committee of
286 the General Assembly, the courts, the Council on Probate Judicial
287 Conduct, the Governor, Lieutenant Governor or Attorney General, or
288 town or regional boards of education, or automobile dispute
289 settlement panels established pursuant to section 42-181 of the 2008
290 supplement to the general statutes;

291 (2) "Contested case" means a proceeding, including but not
292 restricted to rate-making, price fixing and licensing, in which the legal
293 rights, duties or privileges of a party are required by state statute or
294 regulation to be determined by an agency or by the Office of
295 Administrative Hearings after an opportunity for hearing or in which a
296 hearing is in fact held, but does not include proceedings on a petition
297 for a declaratory ruling under section 4-176, as amended by this act,
298 hearings referred to in section 4-168 of the 2008 supplement of the
299 general statutes or hearings conducted by the Department of
300 Correction or the Board of Pardons and Paroles;

301 (3) "Final decision" means (A) the [agency] determination in a

302 contested case made pursuant to section 4-179, as amended by this act,
303 section 22 of this act and section 4-180, as amended by this act, (B) a
304 declaratory ruling issued by an agency pursuant to section 4-176, as
305 amended by this act, or (C) [an agency] a decision made after
306 reconsideration of a final decision. The term does not include a
307 preliminary or intermediate ruling or order, [of an agency,] or a ruling
308 [of an agency] granting or denying a petition for reconsideration;

309 (4) "Hearing officer" means an individual appointed by an agency to
310 conduct a hearing in an agency proceeding that is not conducted by an
311 administrative law adjudicator pursuant to section 8 of this act. Such
312 individual may be a staff employee of the agency;

313 (5) "Intervenor" means a person, other than a party, granted status
314 as an intervenor by an agency in accordance with the provisions of
315 subsection (d) of section 4-176 or subsection (b) of section 4-177a, as
316 amended by this act;

317 (6) "License" includes the whole or part of any agency permit,
318 certificate, approval, registration, charter or similar form of permission
319 required by law, but does not include a license required solely for
320 revenue purposes;

321 (7) "Licensing" includes the agency process respecting the grant,
322 denial, renewal, revocation, suspension, annulment, withdrawal or
323 amendment of a license;

324 (8) "Party" means each person (A) whose legal rights, duties or
325 privileges are required by statute to be determined by an agency
326 proceeding and who is named or admitted as a party, (B) who is
327 required by law to be a party in an agency proceeding, or (C) who is
328 granted status as a party under subsection (a) of section 4-177a, as
329 amended by this act;

330 (9) "Person" means any individual, partnership, corporation, limited
331 liability company, association, governmental subdivision, agency or
332 public or private organization of any character, but does not include

333 the agency conducting the proceeding;

334 (10) "Presiding officer" means the head of the agency presiding at a
335 hearing, the member of [an] a multimember agency or the hearing
336 officer designated by the head of the agency to preside at [the] a
337 hearing, or an administrative law adjudicator presiding at a hearing;

338 (11) "Proposed final decision" means a final decision proposed by an
339 agency or a presiding officer under section 4-179, as amended by this
340 act, or section 22 of this act;

341 (12) "Proposed regulation" means a proposal by an agency under
342 the provisions of section 4-168 of the 2008 supplement to the general
343 statutes for a new regulation or for a change in, addition to or repeal of
344 an existing regulation;

345 (13) "Regulation" means each agency statement of general
346 applicability, without regard to its designation, that implements,
347 interprets, or prescribes law or policy, or describes the organization,
348 procedure, or practice requirements of any agency. The term includes
349 the amendment or repeal of a prior regulation, but does not include
350 (A) statements concerning only the internal management of any
351 agency and not affecting private rights or procedures available to the
352 public, (B) declaratory rulings issued pursuant to section 4-176, as
353 amended by this act, or (C) intra-agency or interagency memoranda;

354 (14) "Regulation-making" means the process for formulation and
355 adoption of a regulation;

356 (15) "Administrative law adjudicator" means an administrative law
357 adjudicator transferred in accordance with sections 2 to 5, inclusive, of
358 this act or a person appointed pursuant to section 4 of this act to
359 conduct administrative hearings;

360 (16) "Head of the agency" means the individual or group of
361 individuals constituting the highest authority within an agency.

362 Sec. 13. Subsection (g) of section 4-176 of the general statutes is

363 repealed and the following is substituted in lieu thereof (*Effective*
364 *October 1, 2008*):

365 (g) If the agency conducts a hearing in a proceeding for a
366 declaratory ruling, the provisions of [subsection (b) of section 4-177c,
367 section 4-178, as amended by this act, and section 4-179, as amended
368 by this act, shall apply to the hearing.

369 Sec. 14. Section 4-176e of the general statutes is repealed and the
370 following is substituted in lieu thereof (*Effective October 1, 2008*):

371 Except as otherwise required by the general statutes, a [hearing in
372 an agency proceeding may be held before (1)] contested case shall be
373 heard by (1) an administrative law adjudicator, (2) the head of the
374 agency, (3) one or more of the members of a multimember agency, or
375 (4) one or more hearing officers, provided no individual who has
376 personally carried out the function of an investigator in a contested
377 case may serve as a hearing officer in that case, [, or (2) one or more of
378 the members of the agency.]

379 Sec. 15. Section 4-177 of the general statutes is repealed and the
380 following is substituted in lieu thereof (*Effective October 1, 2008*):

381 (a) In a contested case, all parties shall be afforded an opportunity
382 for hearing after reasonable notice from the agency.

383 (b) The notice shall be in writing and shall include: (1) A statement
384 of the time, place [,] and nature of the hearing or, if the contested case
385 has been referred to the Office of Administrative Hearings, a statement
386 that the matter has been referred to the Office of Administrative
387 Hearings and that the time and place of the hearing will be set by an
388 administrative law adjudicator; (2) a statement of the legal authority
389 and jurisdiction under which the hearing is to be held; (3) a reference
390 to the particular sections of the statutes and regulations involved; and
391 (4) a short and plain statement of the matters asserted. If the agency or
392 party is unable to state the matters in detail at the time the notice is
393 served, the initial notice may be limited to a statement of the issues

394 involved. Thereafter, upon application, a more definite and detailed
395 statement shall be furnished.

396 (c) After an agency refers a contested case to the Office of
397 Administrative Hearings, the agency shall certify the official record in
398 such contested case to the Office of Administrative Hearings. The
399 Office of Administrative Hearings shall issue a notice in writing to all
400 parties that shall include a statement of the time, place and nature of
401 the hearing. Thereafter, a party shall file all documents that are to
402 become part of such record with the Office of Administrative
403 Hearings. The filing of such documents with the agency rather than
404 with the Office of Administrative Hearings shall not be a jurisdictional
405 defect and shall not be grounds for termination of the proceeding,
406 provided the administrative law adjudicator may assess appropriate
407 costs and sanctions against a party who misfiles such documents on a
408 showing of prejudice resulting from a wilful misfiling. The Office of
409 Administrative Hearings shall maintain the official record of a
410 contested case referred to said office.

411 [(c)] (d) Unless precluded by law, a contested case may be resolved
412 by stipulation, agreed settlement [,] or consent order or by the default
413 of a party.

414 [(d)] (e) The record in a contested case shall include: (1) Written
415 notices related to the case; (2) all petitions, pleadings, motions and
416 intermediate rulings; (3) evidence received or considered; (4) questions
417 and offers of proof, objections and rulings thereon; (5) the official
418 transcript, if any, of proceedings relating to the case, or, if not
419 transcribed, any recording or stenographic record of the proceedings;
420 (6) proposed final decisions and exceptions thereto; and (7) the final
421 decision.

422 [(e)] (f) Any recording or stenographic record of the proceedings
423 shall be transcribed on request of any party. The requesting party shall
424 pay the cost of such transcript, unless otherwise provided by law.
425 Nothing in this section shall relieve an agency of its responsibility
426 under section 4-183, as amended by this act, to transcribe the record for

427 an appeal.

428 Sec. 16. Section 4-177a of the general statutes is repealed and the
429 following is substituted in lieu thereof (*Effective October 1, 2008*):

430 (a) The presiding officer shall grant a person status as a party in a
431 contested case if [that] such officer finds that: (1) Such person has
432 submitted a written petition to the agency or presiding officer, and
433 mailed copies to all parties, at least five days before the date of
434 hearing; and (2) the petition states facts that demonstrate that the
435 petitioner's legal rights, duties or privileges shall be specifically
436 affected by [the agency's] a decision in the contested case.

437 (b) The presiding officer may grant any person status as an
438 intervenor in a contested case if [that] such officer finds that: (1) Such
439 person has submitted a written petition to the agency or presiding
440 officer, and mailed copies to all parties, at least five days before the
441 date of hearing; and (2) the petition states facts that demonstrate that
442 the petitioner's participation is in the interests of justice and will not
443 impair the orderly conduct of the proceedings.

444 (c) The five-day requirement in subsections (a) and (b) of this
445 section may be waived at any time before or after commencement of
446 the hearing by the presiding officer on a showing of good cause.

447 (d) If a petition is granted pursuant to subsection (b) of this section,
448 the presiding officer may limit the intervenor's participation to
449 designated issues in which the intervenor has a particular interest as
450 demonstrated by the petition and shall define the intervenor's rights to
451 inspect and copy records, physical evidence, papers and documents, to
452 introduce evidence [,] and to argue and cross-examine on those issues.
453 The presiding officer may further restrict the participation of an
454 intervenor in the proceedings, including the rights to inspect and copy
455 records, to introduce evidence and to cross-examine, so as to promote
456 the orderly conduct of the proceedings.

457 Sec. 17. Section 4-177b of the general statutes is repealed and the

458 following is substituted in lieu thereof (*Effective October 1, 2008*):

459 In a contested case, the presiding officer may administer oaths, take
460 testimony under oath relative to the case, subpoena witnesses and
461 require the production of records, physical evidence, papers and
462 documents to any hearing held in the case. If any person disobeys the
463 subpoena or, having appeared, refuses to answer any question put to
464 [him] such person or to produce any records, physical evidence,
465 papers and documents requested by the presiding officer, the
466 administrative law adjudicator or, if the hearing is conducted by the
467 agency, the agency may apply to the superior court for the judicial
468 district of [Hartford] New Britain or for the judicial district in which
469 the person resides, or to any judge of that court if it is not in session,
470 setting forth the disobedience to the subpoena or refusal to answer or
471 produce, and the court or judge shall cite the person to appear before
472 the court or judge to show cause why the records, physical evidence,
473 papers and documents should not be produced or why a question put
474 to [him] such person should not be answered. Nothing in this section
475 shall be construed to limit the authority of the agency, the
476 administrative law adjudicator or any party as otherwise allowed by
477 law.

478 Sec. 18. Section 4-177c of the general statutes is repealed and the
479 following is substituted in lieu thereof (*Effective October 1, 2008*):

480 [(a)] In a contested case, each party and the agency, including an
481 agency conducting the proceeding, shall be afforded the opportunity
482 (1) to inspect and copy relevant and material records, papers and
483 documents not in the possession of the party or such agency, except as
484 otherwise provided by federal law or any other provision of the
485 general statutes, and (2) at a hearing, to respond, to cross-examine
486 other parties, intervenors [,] and witnesses, and to present evidence
487 and argument on all issues involved.

488 [(b) Persons not named as parties or intervenors may, in the
489 discretion of the presiding officer, be given an opportunity to present
490 oral or written statements. The presiding officer may require any such

491 statement to be given under oath or affirmation.]

492 Sec. 19. Section 4-178 of the general statutes is repealed and the
493 following is substituted in lieu thereof (*Effective October 1, 2008*):

494 In contested cases: (1) Any oral or documentary evidence may be
495 received, but the [agency] presiding officer shall, as a matter of policy,
496 provide for the exclusion of irrelevant, immaterial or unduly
497 repetitious evidence; (2) [agencies shall give effect to] the rules of
498 privilege recognized by law shall be given effect; (3) when a hearing
499 will be expedited and the interests of the parties will not be prejudiced
500 substantially, any part of the evidence may be received in written
501 form; (4) documentary evidence may be received in the form of copies
502 or excerpts, if the original is not readily available, and upon request,
503 parties and the agency, including an agency conducting the
504 proceeding, shall be given an opportunity to compare the copy with
505 the original; (5) a party and [such] the agency, including an agency
506 conducting the proceeding, may conduct cross-examinations required
507 for a full and true disclosure of the facts; (6) notice may be taken of
508 judicially cognizable facts; [and of] (7) in a proceeding conducted by
509 the agency or in an agency review of a proposed final decision, notice
510 may be taken of generally recognized technical or scientific facts
511 within the agency's specialized knowledge; [(7)] (8) parties shall be
512 notified in a timely manner of any material noticed, including any
513 agency memoranda or data, and they shall be afforded an opportunity
514 to contest the material so noticed; and [(8) the agency's] (9) in a
515 proceeding conducted by the agency or in an agency review of a
516 proposed final decision, the agency may use its experience, technical
517 competence [,] and specialized knowledge [may be used] in the
518 evaluation of the evidence.

519 Sec. 20. Section 4-178a of the general statutes is repealed and the
520 following is substituted in lieu thereof (*Effective October 1, 2008*):

521 If a hearing in a contested case or in a declaratory ruling proceeding
522 is held before a hearing officer or before less than a majority of the
523 members of the agency who are authorized by law to render a final

524 decision, a party, if permitted by regulation and before rendition of the
525 final decision, may request a review by a majority of the members of
526 the agency, of any preliminary, procedural or evidentiary ruling made
527 at the hearing. The majority of the members may make an appropriate
528 order, including the reconvening of the hearing. The provisions of this
529 section do not apply to a hearing conducted by an administrative law
530 adjudicator.

531 Sec. 21. Section 4-179 of the general statutes is repealed and the
532 following is substituted in lieu thereof (*Effective October 1, 2008*):

533 (a) When, in an agency proceeding that is not conducted by an
534 administrative law adjudicator, a majority of the members of the
535 agency who are to render the final decision have not heard the matter
536 or read the record, the decision, if adverse to a party, shall not be
537 rendered until a proposed final decision is served upon the parties,
538 and an opportunity is afforded to each party adversely affected to file
539 exceptions and present briefs and oral argument to the members of the
540 agency who are to render the final decision.

541 (b) A proposed final decision made under this section shall be in
542 writing and [contain a statement of the reasons for the decision and a
543 finding of facts and conclusion of law on each issue of fact or law
544 necessary to the decision] shall comply with the requirements of
545 subsection (c) of section 4-180, as amended by this act.

546 (c) Except when authorized by law to render a final decision for an
547 agency, a hearing officer shall, after hearing a matter, make a proposed
548 final decision.

549 (d) The parties and the agency conducting the proceeding, by
550 written stipulation, may waive compliance with this section.

551 Sec. 22. (NEW) (*Effective October 1, 2008*) (a) A proposed final
552 decision rendered by an administrative law adjudicator shall be
553 delivered promptly to each party or the party's authorized
554 representative, and to the agency, personally or by United States mail,

555 certified or registered, postage prepaid, return receipt requested. After
556 such proposed final decision is rendered, the record in the contested
557 case shall be delivered promptly to the agency.

558 (b) A proposed final decision rendered by an administrative law
559 adjudicator shall become a final decision of the agency unless the head
560 of the agency, not later than twenty-one days following the date the
561 proposed final decision is delivered or mailed to the agency, modifies
562 or rejects the proposed final decision, provided the head of the agency
563 may, before expiration of such time period and for good cause, certify
564 the extension of such time period for not more than an additional
565 twenty-one days. If the head of the agency modifies or rejects the
566 proposed final decision, the head of the agency shall state the reason
567 for the modification or rejection on the record. In reviewing a proposed
568 final decision rendered by an administrative law adjudicator, the head
569 of the agency may afford each party, including the agency, an
570 opportunity to present briefs and may afford each party, including the
571 agency, an opportunity to present oral argument.

572 (c) If, within the time period provided in subsection (b) of this
573 section, the head of the agency, in reviewing a proposed final decision
574 rendered by an administrative law adjudicator, determines that
575 additional evidence is necessary, the head of the agency shall refer the
576 matter to the Office of Administrative Hearings. The Chief
577 Administrative Law Adjudicator shall assign the administrative law
578 adjudicator who rendered such proposed final decision to take the
579 additional evidence unless such administrative law adjudicator is
580 unavailable. After taking the additional evidence, the administrative
581 law adjudicator shall, not later than thirty days following such referral,
582 prepare a proposed final decision as provided in this section based on
583 such additional evidence and the record of the prior hearing.

584 (d) A proposed final decision made under this section shall be in
585 writing and shall comply with the requirements of subsection (c) of
586 section 4-180 of the general statutes, as amended by this act.

587 Sec. 23. Section 4-180 of the general statutes is repealed and the

588 following is substituted in lieu thereof (*Effective October 1, 2008*):

589 (a) Each agency and administrative law adjudicator shall proceed
590 with reasonable dispatch to conclude any matter pending before [it]
591 such agency or administrative law adjudicator and, in all hearings of
592 contested cases conducted by the agency or the administrative law
593 adjudicator, shall render a final decision within ninety days following
594 the close of evidence or the due date for the filing of briefs, whichever
595 is later. [, in such proceedings.]

596 (b) If, in any contested case, any agency or administrative law
597 adjudicator fails to comply with the provisions of subsection (a) of this
598 section, [in any contested case, any party thereto] any party to such
599 contested case may apply to the superior court for the judicial district
600 of [Hartford] New Britain for an order requiring the agency or
601 administrative law adjudicator to render a proposed final decision or a
602 final decision forthwith. The court, after hearing, shall issue an
603 appropriate order.

604 (c) A final decision in a contested case shall be in writing or, if there
605 is no proposed final decision, orally stated on the record. [and, if
606 adverse to a party,] A proposed final decision and a final decision in a
607 contested case shall include [the agency's] findings of fact and
608 conclusions of law necessary to [its] the decision and shall be made by
609 applying all pertinent provisions of law. Findings of fact shall be based
610 exclusively on the evidence in the record and on matters noticed. The
611 [agency shall state in] proposed final decision and the final decision
612 shall contain the name of each party and the most recent mailing
613 address, provided to the agency, of the party or [his] the party's
614 authorized representative. If the final decision is orally stated on the
615 record, each such name and mailing address shall be included in the
616 record.

617 (d) The final decision shall be delivered promptly to each party or
618 [his] the party's authorized representative and, in the case of a final
619 decision by an administrative law adjudicator authorized by law to
620 render such decision, to the agency, personally or by United States

621 mail, certified or registered, postage prepaid, return receipt requested.
622 [The] An agency rendering a final decision shall immediately transmit
623 a copy of such decision to the Office of Administrative Hearings. A
624 proposed final decision that becomes a final decision because of
625 agency inaction, as provided in subsection (b) of section 22 of this act,
626 shall become effective at the expiration of the time period specified in
627 said subsection or on a later date specified in such proposed final
628 decision. Any other final decision shall be effective when personally
629 delivered or mailed or on a later date specified [by the agency] in such
630 final decision. The date of delivery or mailing of a proposed final
631 decision and a final decision shall be endorsed on the front of the
632 decision or on a transmittal sheet included with the decision.

633 Sec. 24. Subsection (a) of section 4-181 of the general statutes is
634 repealed and the following is substituted in lieu thereof (*Effective*
635 *October 1, 2008*):

636 (a) Unless required for the disposition of ex parte matters
637 authorized by law, no hearing officer, administrative law adjudicator
638 or member of an agency who, in a contested case, is to render a final
639 decision or to make a proposed final decision shall communicate,
640 directly or indirectly, in connection with any issue of fact, with any
641 person or party, or, in connection with any issue of law, with any party
642 or the party's representative, without notice and opportunity for all
643 parties to participate.

644 Sec. 25. Section 4-181a of the general statutes is repealed and the
645 following is substituted in lieu thereof (*Effective October 1, 2008*):

646 (a) (1) Unless otherwise provided by law, a party or the agency in a
647 contested case may, within fifteen days after the personal delivery or
648 mailing of the final decision or within fifteen days after the date that a
649 proposed final decision becomes a final decision because of agency
650 inaction, as provided in subsection (b) of section 22 of this act, file with
651 the [agency] authority that rendered the final decision a petition for
652 reconsideration of the decision on the ground that: (A) An error of fact
653 or law should be corrected; (B) new evidence has been discovered

654 which materially affects the merits of the case and which for good
655 reasons was not presented in the agency proceeding; or (C) other good
656 cause for reconsideration has been shown. Within twenty-five days of
657 the filing of the petition, [the agency] such authority shall decide
658 whether to reconsider the final decision. The failure of [the agency]
659 such authority to make [that] such determination within twenty-five
660 days of such filing shall constitute a denial of the petition.

661 (2) Within forty days of the personal delivery or mailing of the final
662 decision, the [agency] authority that rendered the final decision,
663 regardless of whether a petition for reconsideration has been filed,
664 may decide to reconsider the final decision.

665 (3) If the [agency] authority that rendered the final decision decides
666 to reconsider [a] the final decision, pursuant to subdivision (1) or (2) of
667 this subsection, [the agency] such authority shall proceed in a
668 reasonable time to conduct such additional proceedings as may be
669 necessary to render a decision modifying, affirming or reversing the
670 final decision, provided such decision made after reconsideration shall
671 be rendered not later than ninety days following the date on which
672 [the agency] such authority decides to reconsider the final decision. If
673 [the agency] such authority fails to render such decision made after
674 reconsideration within such ninety-day period, the original final
675 decision shall remain the final decision in the contested case for
676 purposes of any appeal under the provisions of section 4-183, as
677 amended by this act.

678 (4) Except as otherwise provided in subdivision (3) of this
679 subsection, [an agency] a decision made after reconsideration pursuant
680 to this subsection shall become the final decision in the contested case
681 in lieu of the original final decision for purposes of any appeal under
682 the provisions of section 4-183, as amended by this act, including, but
683 not limited to, an appeal of (A) any issue decided by the [agency]
684 authority that rendered the final decision in its original final decision
685 that was not the subject of any petition for reconsideration or [the
686 agency's] such authority's decision made after reconsideration, (B) any

687 issue as to which reconsideration was requested but not granted, and
688 (C) any issue that was reconsidered but not modified by [the agency]
689 such authority from the determination of such issue in the original
690 final decision.

691 (b) On a showing of changed conditions, the [agency] authority that
692 rendered the final decision may reverse or modify the final decision, at
693 any time, at the request of any person or on [the agency's] such
694 authority's own motion. The procedure set forth in this chapter for
695 contested cases shall be applicable to any proceeding in which such
696 reversal or modification of any final decision is to be considered. The
697 party or parties who were the subject of the original final decision, or
698 their successors, if known, and intervenors in the original contested
699 case, shall be notified of the proceeding and shall be given the
700 opportunity to participate in the proceeding. Any decision to reverse
701 or modify a final decision shall make provision for the rights or
702 privileges of any person who has been shown to have relied on such
703 final decision.

704 (c) The [agency] authority that rendered the final decision may,
705 without further proceedings, modify a final decision to correct any
706 clerical error. A person may appeal [that] such modification under the
707 provisions of section 4-183, as amended by this act, or, if an appeal is
708 pending when the modification is made, may amend the appeal.

709 (d) For the purposes of this section and section 4-183, as amended
710 by this act, in the case of a proposed final decision that becomes a final
711 decision because of agency inaction, as provided in subsection (b) of
712 section 22 of this act, the authority that rendered the final decision
713 shall be deemed to be the agency.

714 Sec. 26. Section 4-183 of the general statutes is repealed and the
715 following is substituted in lieu thereof (*Effective October 1, 2008*):

716 (a) A person who has exhausted all administrative remedies
717 available within the agency and who is aggrieved by a final decision
718 may appeal to the Superior Court as provided in this section. The filing

719 of a petition for reconsideration is not a prerequisite to the filing of
720 such an appeal.

721 (b) A person may appeal a preliminary, procedural or intermediate
722 agency action or ruling to the Superior Court if (1) it appears likely that
723 the person will otherwise qualify under this chapter to appeal from the
724 final agency action or ruling, and (2) postponement of the appeal
725 would result in an inadequate remedy.

726 (c) (1) Within forty-five days after mailing of the final decision
727 under section 4-180, as amended by this act, or, if there is no mailing,
728 within forty-five days after personal delivery of the final decision
729 under said section, or (2) within forty-five days after the [agency]
730 authority that rendered the final decision denies a petition for
731 reconsideration of the final decision pursuant to subdivision (1) of
732 subsection (a) of section 4-181a, as amended by this act, or (3) within
733 forty-five days after mailing of the final decision made after
734 reconsideration pursuant to subdivisions (3) and (4) of subsection (a)
735 of section 4-181a, as amended by this act, or, if there is no mailing,
736 within forty-five days after personal delivery of the final decision
737 made after reconsideration pursuant to said subdivisions, or (4) within
738 forty-five days after the expiration of the ninety-day period required
739 under subdivision (3) of subsection (a) of section 4-181a, as amended
740 by this act, if [the agency] such authority decides to reconsider the final
741 decision and fails to render a decision made after reconsideration
742 within such period, or (5) if a proposed final decision becomes a final
743 decision because of agency inaction, as provided in subsection (b) of
744 section 22 of this act, within forty-five days after the decision becomes
745 final, whichever is applicable and is later, a person appealing as
746 provided in this section shall serve a copy of the appeal on the agency
747 [that rendered the final decision] at its office or at the office of the
748 Attorney General in Hartford and file the appeal with the clerk of the
749 superior court for the judicial district of New Britain or for the judicial
750 district wherein the person appealing resides or, if [that] such person is
751 not a resident of this state, with the clerk of the court for the judicial
752 district of New Britain. An appeal of a final decision under this section

753 shall be taken within such applicable forty-five-day period regardless
754 of the effective date of the final decision. Within [that] such time, the
755 person appealing shall also serve a copy of the appeal on each party
756 listed in the final decision at the address shown in the decision,
757 provided failure to make such service within forty-five days on parties
758 other than the agency [that rendered the final decision] shall not
759 deprive the court of jurisdiction over the appeal. Service of the appeal
760 shall be made by United States mail, certified or registered, postage
761 prepaid, return receipt requested, without the use of a state marshal or
762 other officer, or by personal service by a proper officer or indifferent
763 person making service in the same manner as complaints are served in
764 ordinary civil actions. If service of the appeal is made by mail, service
765 shall be effective upon deposit of the appeal in the mail.

766 (d) The person appealing, not later than fifteen days after filing the
767 appeal, shall file or cause to be filed with the clerk of the court an
768 affidavit, or the state marshal's return, stating the date and manner in
769 which a copy of the appeal was served on each party and on the
770 agency [that rendered the final decision,] and, if service was not made
771 on a party, the reason for failure to make service. If the failure to make
772 service causes prejudice to any party to the appeal or to the agency, the
773 court, after hearing, may dismiss the appeal.

774 (e) If service has not been made on a party, the court, on motion,
775 shall make such orders of notice of the appeal as are reasonably
776 calculated to notify each party not yet served.

777 (f) The filing of an appeal shall not, of itself, stay enforcement of [an
778 agency] a final decision. An application for a stay may be made to the
779 agency, to the court or to both. Filing of an application with the agency
780 shall not preclude action by the court. A stay, if granted, shall be on
781 appropriate terms.

782 (g) Within thirty days after the service of the appeal, or within such
783 further time as may be allowed by the court, the agency shall
784 transcribe any portion of the record that has not been transcribed and
785 transmit to the reviewing court the original or a certified copy of the

entire record of the proceeding appealed from, which shall include the [agency's] findings of fact and conclusions of law, separately stated. By stipulation of all parties to such appeal proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(h) If, before the date set for hearing on the merits of an appeal, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the [agency] authority that rendered the final decision, the court may order that the additional evidence be taken before [the agency] such authority upon conditions determined by the court. [The agency] Such authority may modify its findings and decision by reason of the additional evidence and shall file [that] such evidence and any modifications, new findings [,] or decisions with the reviewing court.

(i) [The] Except as otherwise provided by law, the appeal shall be conducted by the court without a jury and shall be confined to the record. If alleged irregularities in procedure before the [agency] presiding officer are not shown in the record or if facts necessary to establish aggrievement are not shown in the record, proof limited thereto may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(j) [The] Unless a different standard of review is provided by law, the court shall not substitute its judgment for that of the [agency] authority that rendered the final decision as to the weight of the evidence on questions of fact. The court shall affirm the final decision [of the agency] unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions [,] or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory

819 authority of the agency; (3) made upon unlawful procedure; (4)
820 affected by other error of law; (5) clearly erroneous in view of the
821 reliable, probative [,] and substantial evidence on the whole record; or
822 (6) arbitrary or capricious or characterized by abuse of discretion or
823 clearly unwarranted exercise of discretion. If the court finds such
824 prejudice, [it] the court shall sustain the appeal and, if appropriate,
825 may render a judgment under subsection (k) of this section or remand
826 the case for further proceedings. For the purposes of this section, a
827 remand is a final judgment.

828 (k) If a particular agency action is required by law, the court, on
829 sustaining the appeal, may render a judgment that modifies the
830 [agency] final decision, orders the particular agency action, or orders
831 the agency to take such action as may be necessary to effect the
832 particular action.

833 (l) In all appeals taken under this section, costs may be taxed in
834 favor of the prevailing party in the same manner, and to the same
835 extent, that costs are allowed in judgments rendered by the Superior
836 Court. No costs shall be taxed against the state, except as provided in
837 section 4-184a.

838 (m) In any case in which a person appealing claims that [he] such
839 person cannot pay the costs of an appeal under this section, [he] such
840 person shall, within the time permitted for filing the appeal, file with
841 the clerk of the court to which the appeal is to be taken an application
842 for waiver of payment of such fees, costs and necessary expenses,
843 including the requirements of bond, if any. The application shall
844 conform to the requirements prescribed by rule of the judges of the
845 Superior Court. After such hearing as the court determines is
846 necessary, the court shall render its judgment on the application,
847 which judgment shall contain a statement of the facts the court has
848 found, with its conclusions thereon. The filing of the application for the
849 waiver shall toll the time limits for the filing of an appeal until such
850 time as a judgment on such application is rendered.

851 Sec. 27. Subsection (e) of section 1-82a of the general statutes is

852 repealed and the following is substituted in lieu thereof (*Effective*
853 *October 1, 2008*):

854 (e) The judge trial referee shall make public a finding of probable
855 cause not later than five business days after any such finding. At such
856 time the entire record of the investigation shall become public, except
857 that the Office of State Ethics may postpone examination or release of
858 such public records for a period not to exceed fourteen days for the
859 purpose of reaching a stipulation agreement pursuant to subsection
860 [(c)] (d) of section 4-177, as amended by this act. Any such stipulation
861 agreement or settlement shall be approved by a majority of those
862 members present and voting.

863 Sec. 28. Subsection (e) of section 1-93a of the general statutes is
864 repealed and the following is substituted in lieu thereof (*Effective*
865 *October 1, 2008*):

866 (e) The judge trial referee shall make public a finding of probable
867 cause not later than five business days after any such finding. At such
868 time, the entire record of the investigation shall become public, except
869 that the Office of State Ethics may postpone examination or release of
870 such public records for a period not to exceed fourteen days for the
871 purpose of reaching a stipulation agreement pursuant to subsection
872 [(c)] (d) of section 4-177, as amended by this act. Any stipulation
873 agreement or settlement entered into for a violation of this part shall be
874 approved by a majority of its members present and voting.

875 Sec. 29. Subsection (a) of section 46a-57 of the general statutes is
876 repealed and the following is substituted in lieu thereof (*Effective July*
877 *1, 2008*):

878 (a) (1) The Governor shall appoint three human rights referees for
879 terms commencing October 1, 1998, and four human rights referees for
880 terms commencing January 1, 1999. The human rights referees so
881 appointed shall serve for a term of one year.

882 (2) (A) On and after October 1, 1999, the Governor shall appoint

883 seven human rights referees with the advice and consent of both
 884 houses of the General Assembly. The Governor shall appoint three
 885 human rights referees to serve for a term of two years commencing
 886 October 1, 1999. The Governor shall appoint four human rights
 887 referees to serve for a term of three years commencing January 1, 2000.
 888 Thereafter, human rights referees shall serve for a term of three years.

889 (B) On and after July 1, 2001, there shall be five human rights
 890 referees. Each of the human rights referees serving on July 1, 2001,
 891 shall complete the term to which such referee was appointed.
 892 Thereafter, human rights referees shall be appointed by the Governor,
 893 with the advice and consent of both houses of the General Assembly,
 894 to serve for a term of three years.

895 (C) On and after July 1, 2004, there shall be seven human rights
 896 referees. Each of the human rights referees serving on July 1, 2004,
 897 shall complete the term to which such referee was appointed and shall
 898 serve until his successor is appointed and qualified. Thereafter, human
 899 rights referees shall be appointed by the Governor, with the advice and
 900 consent of both houses of the General Assembly, to serve for a term of
 901 three years.

902 (D) On and after July 1, 2008, there shall be six human rights
 903 referees. Each of the human rights referees serving on July 1, 2008,
 904 shall complete the term for which such referee was appointed.
 905 Thereafter, human rights referees shall be appointed by the Governor,
 906 with the advice and consent of both houses of the General Assembly,
 907 to serve for a term of three years.

908 (3) When the General Assembly is not in session, any vacancy shall
 909 be filled pursuant to the provisions of section 4-19. The Governor may
 910 remove any human rights referee for cause.

This act shall take effect as follows and shall amend the following sections:

Section 1	July 1, 2008	New section
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Sec. 2	<i>July 1, 2008</i>	New section
Sec. 3	<i>July 1, 2008</i>	New section
Sec. 4	<i>October 1, 2008</i>	New section
Sec. 5	<i>October 1, 2008</i>	New section
Sec. 6	<i>October 1, 2008</i>	New section
Sec. 7	<i>October 1, 2008</i>	New section
Sec. 8	<i>October 1, 2008</i>	New section
Sec. 9	<i>July 1, 2008</i>	New section
Sec. 10	<i>July 1, 2008</i>	New section
Sec. 11	<i>July 1, 2008</i>	2c-2b(e)
Sec. 12	<i>October 1, 2008</i>	4-166
Sec. 13	<i>October 1, 2008</i>	4-176(g)
Sec. 14	<i>October 1, 2008</i>	4-176e
Sec. 15	<i>October 1, 2008</i>	4-177
Sec. 16	<i>October 1, 2008</i>	4-177a
Sec. 17	<i>October 1, 2008</i>	4-177b
Sec. 18	<i>October 1, 2008</i>	4-177c
Sec. 19	<i>October 1, 2008</i>	4-178
Sec. 20	<i>October 1, 2008</i>	4-178a
Sec. 21	<i>October 1, 2008</i>	4-179
Sec. 22	<i>October 1, 2008</i>	New section
Sec. 23	<i>October 1, 2008</i>	4-180
Sec. 24	<i>October 1, 2008</i>	4-181(a)
Sec. 25	<i>October 1, 2008</i>	4-181a
Sec. 26	<i>October 1, 2008</i>	4-183
Sec. 27	<i>October 1, 2008</i>	1-82a(e)
Sec. 28	<i>October 1, 2008</i>	1-93a(e)
Sec. 29	<i>July 1, 2008</i>	46a-57(a)

Statement of Legislative Commissioners:

A reference to the Department of Social Services was inserted in section 8(f) for consistency, and section 29 was deleted because it was unnecessary due to the inclusion of the Department of Social Services in section 8 of the bill.

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Office of Administrative Hearings	GF - Cost	499,150	466,930
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	64,960	82,148
Department of Public Works or Office of Administrative Hearings	GF - Potential Cost	285,000	185,000
Human Rights & Opportunities, Com.	GF - Savings	86,000	86,000
Social Services, Dept.	GF - Cost	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in significant cost to establish a new state agency, the Office of Administrative Hearings (OAH). Two additional positions² and office space to house approximately twenty seven staff members would be required under the bill. In addition, it is anticipated that a state cost would be incurred to raise the salaries of hearing officers once they are designated as administrative law adjudicators under the bill and subject to the bill's stricter credentials.³ Fringe benefits, training and education, and other expenses (e.g., court reporting,

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The first year fringe benefit costs for new positions do not include pension costs. The estimated first year fringe benefit rate as a percentage of payroll is 25.36%. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS fringe benefit rate is 33.27%, which when combined with the rate for non-pension fringe benefits totals 58.63%.

² 1 Chief Administrative Law Adjudicator Salary = \$117,061; 1 Administrative Assistant Salary = \$46,750.

³ Estimated annual cost for the salary differential of 23 hearing officers = \$123,000.

equipment leases) to run the new office would also be incurred.⁴ These expenses would be incurred regardless of whether or not additional office space is required. (See below.)

Funds in the amount of \$163,000 have been included within sHB 5021 (the budget bill as favorably reported from the Appropriations Committee) to support the agency's operations effective April 1, 2009.

Transfer of Personnel

The bill reassigns hearing officers and support staff from the Department of Children and Families, Department of Transportation, and Department of Social Services. It is estimated that twenty three staff members would be reassigned to the OAH under this provision. These reassignments would necessitate the transfer of approximately \$1.5 million from these state agencies to the OAH in order to support the salaries of these transferred staff members. It is not known whether additional resources would be needed in the Department of Social Services for final review and approval of proposed final decisions by the OAH.

Office Space

Assuming that the agency is not located in existing state-owned office space, there will be a General Fund cost to lease office space, which is summarized in the table below:

⁴ The office expenses are based on the actual costs of a state agency of similar size, the Freedom of Information Commission. (FY 07 = \$180,000)

Estimated Lease Costs¹ for the Office of Administrative Hearings					
<u>Expenditure</u>	<u>FY 09</u>	<u>FY 10</u>	<u>Year</u> <u>FY 11</u>	<u>FY 12</u>	<u>FY 13</u>
Annual rent payment	\$120,000	\$120,000	\$120,000	\$120,000	\$120,000
Capitalized fit out costs ²	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000
Annual operating cost ³	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000
One time costs - Moving, furniture, telecommunications equipment	\$100,000	\$0	\$0	\$0	\$0
Total	\$285,000	\$185,000	\$185,000	\$185,000	\$185,000

¹ These estimates were provided by the Department of Public Works.

² Fit out costs are the costs associated with configuring the office space to meet the tenant's needs, including office partitions and electrical, telecommunications and computer wiring. They are incurred in the first year before the agency moves into the leased space and are usually capitalized over the 5-year life of the lease.

³ Annual operating costs include utilities, heating and cooling, taxes and cleaning services.

If the agency is located in the City of Hartford, the costs listed above will fall under the budget of the Department of Public Works because DPW has care and control of state-occupied office space in the city. If the agency is located outside of DPW's area of responsibility, the leasing costs will be incurred by the Department of Administrative Hearings.

Establishment of the OAH is expected to yield efficiencies in the processing of cases. However, it is uncertain to what extent this will result in budgetary savings to offset the certain costs indicated above.

CHRO Savings

The bill eliminates one Human Rights Referee position within the Commission on Human Rights and Opportunities (CHRO). This position is funded at \$86,000 annually, although it is currently vacant.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 201*****AN ACT ESTABLISHING A DEMONSTRATION PROJECT FOR AN OFFICE OF ADMINISTRATIVE HEARINGS.*****SUMMARY:**

This bill establishes an Office of Administrative Hearings (OAH) as a demonstration project that terminates on July 1, 2014, unless it is reestablished. OAH will have its central office in Hartford County. The bill requires OAH to conduct contested case hearings for the (1) Commission on Human Rights and Opportunities (CHRO) with respect to allegations of retaliation against whistleblowers only, and (2) departments of children and families, social services, and transportation. The bill transfers certain personnel, including hearing officers, from these agencies to OAH.

The bill requires the office to conduct the hearings in accordance with the bill and the Uniform Administrative Procedure Act (UAPA). After the hearings, the bill requires OAH to issue a proposed final decision or final decision, if allowed or required by law. Any proposed final decision may be rejected, modified, or accepted by the referring agency. It becomes final if the agencies fail to act within a specified period.

The bill makes several changes to the UAPA, most of which are conforming ones made necessary by the new office's role in contested cases.

The bill reduces the number of human rights referees from seven to six beginning July 1, 2008. Each referee serving on that date must complete his or her term. Thereafter, just as under current law, the governor appoints the referees with the advice and consent of the General Assembly, to serve three-year terms.

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2008, except the following provisions are effective July 1, 2008: (1) establishing the OAH, (2) requiring the nomination of a chief administrative law adjudicator and spelling out his or her duties, (3) prohibiting the office from hearing certain cases, (4) authorizing the governor to exempt certain agencies from the referral requirement, (5) subjecting OAH to sunset review, and (6) reducing the number of human rights referees.

OFFICE OF ADMINISTRATIVE HEARINGS

Staff

Chief Administrative Law Adjudicator. The bill requires the governor to nominate a chief administrative law adjudicator (ALA) to serve as the office's full-time chief executive officer for an initial term that expires March 1, 2009. Thereafter, she must nominate the chief ALA to a four-year term or until a successor is qualified. The chief ALA must take the same oath of office as legislators and executive and judicial officers. A sitting chief ALA is eligible for re-nomination. The governor may remove the chief ALA for good cause.

The chief ALA must be admitted to the Connecticut bar for at least 10 years, have knowledge of administrative law, and refrain from the private practice of law. The chief ALA is exempt from the classified service.

Chief ALA Nomination and Appointment. When the legislature is in session, the bill requires the governor to refer her chief ALA nominee to the Judiciary Committee, which must report on the nominee within 30 legislative days after the referral but at least seven legislative days before the session ends.

Each legislative chamber must take a roll-call vote on the nominee, whose appointment must be by concurrent resolution. A separate resolution must be prepared for an ALA nominee.

If the legislature does not approve a nominee, the governor must

nominate another candidate for the office within five days after she has notice of the legislature's action.

When the legislature is not in session, the governor may fill a vacancy in the office of the chief ALA only if she first submits the appointee's name to the Judiciary Committee. Within 45 days after receipt of the name, the committee may hold a special meeting to approve or disapprove of the appointee by majority vote. The committee may extend the meeting deadline by 15 days if it cannot complete its investigation and vote within the 45 days. The committee must give the governor written notice of the extension. If the committee fails to act within the allotted times, the nominee is deemed approved. The governor can administer the oath of office to an appointee only after the committee has voted to approve him or her.

Chief ALA Powers and Duties. The chief ALA has all the powers specifically granted by law and any additional powers that are reasonable and necessary for him or her to carry out his or her duties, including the powers and duties of executive branch agency department heads. Additionally, the chief ALA has all the powers and duties of an ALA.

The chief ALA must:

1. assign an ALA to hear each case referred to OAH and, where practicable, base the assignment on expertise in the legal issues or general subject matter of the proceeding;
2. prepare a proposed final decision or, where applicable, a final decision that keeps protected information, including the identity of any person or party, confidential if required by law, regulations, or court order;
3. collect, compile, and prepare statistics and other data on OAH's operations and annually report to the governor and the legislature on such operations, including the number of (a) hearings initiated, (b) proposed final decisions rendered, (c)

partial or total reversals of such decisions by the agencies, (d) final decisions rendered, and (e) proceedings pending;

4. study all aspects of administrative adjudication and develop recommendations to promote impartiality, fairness, uniformity, and cost-effectiveness in the administration and conduct of contested cases;
5. adopt implementing regulations, including regulations to carry out applicable provisions of the UAPA regarding contested case hearings and related OAH policies;
6. develop and implement a program for (a) the continuing education of ALAs in procedural due process and the substantive law of their referring agencies and (b) training ancillary personnel; and
7. index, by name and subject, all written orders and final decisions and make all indices, proposed final decisions, and final decisions available for public inspection and copying electronically as the Freedom of Information Act requires.

The bill specifies that any regulations the office adopts on contested cases it hears supersede any inconsistent agency regulations, policies, or procedures, except those mandated by state or federal law. The regulations must include standard time limits for agency action in contested cases and standards for giving hearing notices, scheduling hearings, and assigning ALAs.

Other Staff. As the office's chief executive officer, the chief ALA can hire staff. The bill transfers to OAH certain full-time and permanent part-time employees from the agencies whose cases the office will hear. The transferred employees are those primarily responsible for (1) conducting hearings in contested cases and issuing final decisions or proposed final decisions, including staff attorneys, hearing adjudicators, and hearing officer and (2) providing administrative services required for conducting the hearings and issuing the

decisions.

Each ALA, other than those transferred from other agencies, must be admitted to the practice of law in this state for at least two years. All ALAs must be knowledgeable in administrative law. ALAs have the powers granted to hearing officers and presiding officers under the UAPA.

Job Classifications and Benefits. The chief ALA, ALAs, assistants, and other OAH employees (1) are entitled to the same fringe benefits as other state employees, (2) are included in state employees' disability and retirement programs, and (3) receive full retirement credit for work completed each year or portion thereof for which retirement benefits are paid.

Transferees and chief ALA appointees are in the classified service and covered by collective bargaining. Those transferred employees who are members of an employee organization at the time of their transfer continue to be represented by that organization.

Transferred employees cannot have their seniority, salaries, or benefits reduced because of the transfer. They get credit for time served in other agencies.

Transferred employees who are members of a collective bargaining unit at the time of their transfer remain the beneficiaries of any existing and applicable memorandum of understanding (MOU) between the Office of Labor Relations and any collective bargaining representative for state employees. These employees cannot lose the job classifications they had when they were transferred. And no promotions governed by any existing MOU between the Office of Labor Relations and any collective bargaining representative for these employees can be denied, delayed, impaired, or eliminated because of OAH's establishment or the transfer of personnel to it. MOU provisions on the rights and obligations of staff attorneys also apply to transferred ALAs.

Transferees who are not members of a collective bargaining unit at

the time of their transfer and employees the chief ALA hires must (1) have the same job classifications as transferees who are members of a collective bargaining unit at the time of their transfer and (2) be subject to, and become the beneficiaries of, the terms of any existing and applicable MOU between the Office of Labor Relations and any collective bargaining representative for state employees, including the rights and obligations contained in any MOU that applies to staff attorneys.

An ALA, assistant, or other OAH employee who is removed, suspended, demoted, or subjected to disciplinary action or other adverse employment action may appeal the action in accordance with the applicable collective bargaining agreement.

Types of Cases Heard

Beginning October 1, 2008, the bill requires OAH to conduct hearings and render proposed final decisions or, if authorized or required by law, final decisions in contested cases brought by or before the:

1. Department of Children and Families (DCF),
2. Department of Transportation, and
3. Department of Social Services (DSS) (see BACKGROUND).

OAH must also conduct hearing on allegations of retaliation brought by whistleblowers. These cases are currently decided by CHRO.

On that same date, the powers, functions, and duties of the referring agencies with respect to their contested cases transfer to OAH. Additionally, DCF and DSS must execute any requisite contract with OAH necessary to maintain and secure any federal or state funding or reimbursement. However, the bill requires any hearing officer under contract with an agency to conduct hearings and issue decisions in contested cases of the type to be referred to complete their cases unless

the chief ALA decides to reassign the cases to ALAs. Beginning October 1, 2011, the governor may, for good cause and at an agency's request, exempt an agency from the requirement for OAH to hear its contested cases.

Any other agency can, with the chief ALA's consent, refer contested cases to OAH for mediation, settlement, or a full adjudication. The powers, functions, and duties of these agencies transfer on the dates of the referrals.

The bill specifies that its section on the types of transferred cases OAH hears, the people allowed to hear them, and their powers and duties do not apply to the State Board of Mediation and Arbitration or the State Board of Labor Relations.

Hearings

The bill requires agencies that refer their cases to OAH to certify the official record in each case, and give the parties notice of the referral and that an ALA will set the time and place of the hearings. OAH must give the notice and also include in it the nature of the hearing. Thereafter, a party must file all documents that are to become part of such record with OAH. Filing these documents with the agency, rather than with OAH, is not a jurisdictional defect and is not grounds for termination of the proceeding. However, the ALA may assess appropriate costs and sanctions against a party who misfiles such documents on a showing of prejudice resulting from a willful misfiling. OAH must maintain the official record of a contested case referred to it.

An ALA assigned by the chief ALA must hear, mediate, or settle any contested case before OAH. The bill prohibits the chief ALA from assigning an ALA to hear (1) a contested case that federal law requires to be conducted by a specific agency or other hearing authority or (2) any matter conducted by an agency head or at least one member of a multimember agency.

The bill requires ALAs to conduct hearings in accordance with the

bill and the UAPA. This means, among other things, that the UAPA's definitions apply to all contested cases conducted by OAH.

If a contested case is not resolved through mediation or settlement, either party may proceed to a hearing. An ALA who attempts to settle or mediate a matter may not thereafter be assigned to hear it. An ALA must dismiss any case resolved by stipulation, agreed settlement, or consent order. The order of dismissal must incorporate by reference and have attached to it the stipulation, agreed settlement, or consent order. The order must further provide that no findings of fact or conclusions of law have been made regarding any alleged violations of the law. A party may petition the New Britain Superior Court to enforce the order and stipulation, agreed settlement, or consent order and for appropriate relief or a restraining order.

Proposed and Final Decisions

An ALA's proposed final decision must be in writing, comply with the UAPA's requirement for final decisions, and be delivered, (either personally or by registered or certified mail, return receipt requested) promptly to each party or the party's authorized representative and to the agency. After the ALA renders the proposed final decision, the case records must be delivered promptly to the agency.

An ALA's proposed final decision becomes the agency's final decision unless the agency head modifies or rejects it within 21 days after it is delivered or mailed. The agency head may, before the expiration of the period and for good cause, extend the 21-day deadline for up to 21 additional days. In the event of agency inaction, the proposed final decision is effective not later than 21 days after it is delivered or mailed or at a later date specified in the proposed final decision. In this case, a party or the agency has 15 days after the proposed decision becomes final to ask for reconsideration. This apparently gives the agency issuing the final decision the authority to ask itself for reconsideration. A person appealing the decision has 45 days after it becomes final to serve a copy of the appeal on the agency or the attorney general's Hartford office and file the appeal (see

below).

When reviewing an ALA's proposed final decision, the head of the agency may give the parties, including the agency, an opportunity to present briefs and oral argument. If the agency head determines that additional evidence is necessary, he or she must refer the matter to OAH. The chief ALA must assign the ALA who rendered the proposed decision to take the additional evidence unless the ALA is unavailable. The ALA has 30 days after the referral to take the additional evidence and prepare a proposed final decision based on it and the record of the prior hearing.

If the head of the agency modifies or rejects the proposed final decision, he or she must state the reason for doing so on the record. An agency must immediately transmit to OAH a copy of any final decision it renders, apparently regardless of whether the new office has jurisdiction over the matter.

UAPA

Definitions

The bill amends the definition of terms defined under the UAPA as necessary to conform to the bill, extends the definitions to the bill unless the context requires otherwise, and defines ALA and head of agency under the UAPA. For example, a "contested case," in addition to being a proceeding in which the legal rights, duties, or privileges of a party are required by state statute or regulation to be determined by an agency, also means such proceedings determined by OAH. "Hearing officer" continues to mean a person appointed by an agency to conduct a hearing in an agency proceeding unless the proceeding is conducted by an ALA. "Final decision" means, among other things, an agency or OAH determination in a contested case.

The bill defines "administrative law adjudicator" as an ALA transferred or hired as specified under the bill and "head of the agency" as the individual or group of individuals constituting the highest authority within an agency.

Nonparties

The bill eliminates the authority of a presiding officer in a contested case or a hearing in a proceeding for a declaratory ruling to allow people not named as parties (intervenors) to present oral or written statements.

Contested Cases

The bill makes numerous changes to the UAPA's provisions on contested cases. Specifically, the bill:

1. extends to agencies reviewing proposed final decisions the same authority agencies hearing contested cases have to (a) take notice of generally recognized technical or scientific facts within their specialized knowledge and (b) use their experience, technical competence, and specialized knowledge when evaluating evidence;
2. creates an exception for hearings conducted by OAH to provisions of the UAPA regarding decisions made by fewer than all members of multi-member agencies (e.g., authorizing parties to request a majority of the members to review preliminary, procedural, or evidentiary rulings before a final decision or proposed final decisions);
3. allows agencies or OAH to enforce a subpoena by filing a complaint in New Britain, rather than Hartford, Superior Court;
4. allows a party to a contested case who does not receive a final decision within 90 days after the close of evidence or the filing of briefs, whichever is later, to apply to the New Britain, rather than Hartford, Superior Court for an order requiring the authority presiding over the case to render a proposed final decision right away;
5. allows a final decision to be stated orally on the record as opposed to written only in cases where there is no proposed final decision, and requires the record of oral decisions to

include the names and addresses of all parties;

6. requires all proposed final and final decisions, instead of just final decisions adverse to a party, to apply pertinent laws and include the findings of fact and conclusions of law;
7. requires that the date a proposed final or final decision is delivered or mailed be endorsed on the front of the decision or on a transmittal sheet included with it; and
8. allows agencies to waive transcript costs if provided by law.

APPEALING A FINAL DECISION

By law, a party in a contested case may file a petition with the deciding agency for reconsideration or modification of a final decision, or file an appeal to Superior Court after exhausting all administrative remedies. In cases of agency inaction, the bill specifies that the agency that issued the final decision is the agency in which the petition must be filed and where all administrative processes must be exhausted. In the case of proposed final decisions issued by OAH, this means the agency for which OAH issued the proposed decision.

The UAPA contains several dates from which a party has 45 days to appeal a final decision to Superior Court. The bill specifies that appeals must be taken within the applicable 45-day period regardless of a final decision's effective date.

The bill also adds another date to the list of dates to address decisions issued by OAH. When OAH issues a proposed final decision that becomes a final decision due to agency inaction, the bill gives parties 45 days after the decision becomes final to file an appeal.

Lastly, under current law all appeals must be conducted by the court without a jury and the court cannot substitute its judgment for that of the authority that rendered the final decision. The bill allows (1) for jury trials in appeals from final decisions if provided by law and (2) substitutions if the law provides a different standard of review.

BACKGROUND***DSS Cases***

DSS is the state's Medicaid agency and as such holds hearings on Medicaid cases. To qualify as the state's Medicaid agency, DSS had to agree that it would not delegate its authority to (1) administer or supervise the program or (2) issue policies, rules, or regulations on program matters. Under the agreement (i.e., state plan), the Medicaid agency's authority cannot be impaired by any outside review of its rules, regulations, or decisions. And no other agency can substitute its judgment for that of the Medicaid agency (42 CFR § 430.10).

Under federal regulations, states must amend their state plan to reflect material changes in (1) state law, organization, policy or (2) operation of the Medicaid program (42 CFR § 430.12 (c)).

Legislative History

The Senate referred the bill (File 53) to the Judiciary Committee. The committee reported a substitute bill that (1) requires the governor to nominate, rather than appoint, a chief ALA; (2) establishes a nomination process; (3) requires OAH to conduct hearings for DSS; (4) eliminates a requirement for OAH to conduct hearings for all CHRO cases; and (4) makes other technical and conforming changes.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 12 Nay 0 (02/29/2008)

Judiciary Committee

Joint Favorable Substitute

Yea 23 Nay 12 (03/31/2008)